

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

RONALD LEE JOHNSON,)	
)	
Petitioner,)	
)	Civil Action No. 20-1092
v.)	
)	District Judge W. Scott Hardy
)	Magistrate Judge Maureen P. Kelly
WESTMORELAND COUNTY PRISON)	
and JOHN R. WALTON, Warden,)	
)	
Respondents.)	

MEMORANDUM ORDER

This matter comes before the Court on *pro se* Petitioner Ronald Lee Johnson's Objections (Docket No. 11) to the Report & Recommendation ("R&R") of Magistrate Judge Maureen P. Kelly entered on November 2, 2020. (Docket No. 10). The R&R recommends that Petitioner's Motion for a Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2241 (the "Petition") (Docket No. 1) be dismissed without prejudice for failure to prosecute given that Petitioner failed to pay the filing fee as directed (Docket No. 6) and failed to respond to the Order to Show Cause entered on October 1, 2020 (Docket No. 9) as of November 2, 2020 when the R&R was filed. Service of the R&R was made on Petitioner by mail and he was informed that any objections to same were due by November 19, 2020.

On November 17, 2020, the Court received Petitioner's Objections to the R&R, in which he contends that the filing fee of \$5.00 could not be withdrawn from his inmate account because the commissary allegedly failed to issue a credit for soup that he tried to purchase but was not available. (Docket No. 11, ¶¶ 1, 2). An August 5, 2020 receipt attached to Petitioner's Objections

indicates that a credit of \$18.70 was to be issued for the soup. (Docket No. 11-1). Additionally, on November 17th, Petitioner filed another Motion for Leave to Proceed in forma pauperis with his inmate account statement attached, purportedly to show that he did not have sufficient funds to pay the \$5.00 filing fee. (Docket Nos. 12; 12-1).

In resolving a party's objections, the Court conducts a *de novo* review of any part of the R&R that has been properly objected to. Fed. R. Civ. P. 72(b)(3); 28 U.S.C. § 636(b)(1). The Court may accept, reject or modify the recommended disposition, as well as receive further evidence or return the matter to the magistrate judge with instructions. *Id.* Upon careful *de novo* review of the R&R, Petitioner's Objections and the entire record, the Court concludes that the Objections do not undermine the R&R's recommended disposition.

In so ruling, the Court agrees with Magistrate Judge Kelly's conclusion that Petitioner had more than sufficient funds in his account to cover the nominal \$5.00 filing fee and therefore properly ordered on August 17, 2020, that he was to pay the filing fee by September 18th or the case would be dismissed for failure to prosecute. (*See* Docket No. 6). Even if Petitioner's account was not credited for the cost of soup that was unavailable on August 5, 2020, as he now claims, his account statement shows the following: \$75 was credited to his account on August 25, 2020, making the balance \$75.83 before he made purchases of \$15 and \$49.51 on August 25th and 26th, respectively; and \$65 was credited to his account on September 8, 2020, making the balance \$65.32 before he made purchases of \$13 and \$51.17 on September 8th and 9th, respectively. (Docket No. 12-1). This information shows that, after Magistrate Judge Kelly issued the order on August 17, 2020, Defendant had more than sufficient funds in his account to enable him to pay the filing fee by September 18th as ordered, yet he failed to do so. As such, the Court will overrule Petitioner's

Objections, adopt the R&R as the Opinion of the Court, dismiss the Petition without prejudice and deny Petitioner's motion to proceed in forma pauperis without prejudice.

Accordingly, in view of the foregoing, the Court enters the following Order:

AND NOW, this 24th day of November, 2020,

IT IS HEREBY ORDERED that Plaintiff's Objections to the R&R (Docket No. 11) are OVERRULED, and the R&R (Docket No. 10) is ADOPTED as the Opinion of the Court.

IT IS FURTHER ORDERED that Petitioner's Motion for a Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2241 (Docket No. 1) is DISMISSED WITHOUT PREJUDICE for the reasons set forth in the R&R and further detailed herein.

IT IS FURTHER ORDERED that Petitioner's Motion for Leave to Proceed in forma pauperis (Docket No. 12) is DENIED WITHOUT PREJUDICE to him filing another action, should he choose to do so if appropriate.

IT IS FURTHER ORDERED that the Clerk of Court shall mark this case CLOSED.

s/ W. Scott Hardy
W. Scott Hardy
United States District Judge

cc: Ronald Lee Johnson (via U.S. mail)
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Greensburg, PA 15601-9176